REMARKS

Reconsideration of this application, as amended, is respectfully requested.

Claims 1, 2, and 5-14 are pending. Claims 1, 2 and 5-14 have been rejected.

Claims 1, 6, 7, 9, 10, 12, 13, and 14 have been amended. Claim 11 has been canceled. No claims have been added. Support for the amendments is found in the specification, the drawings, and in the claims as originally filed. Applicants submit that the amendments do not add new matter.

Applicants reserve all rights with respect to the applicability of the Doctrine of Equivalents.

INTERVIEW SUMMARY

The representative for applicants Tatiana Rossin thanks the Examiner for the courtesy of the telephonic interview on March 4, 2008. The applicants' proposed amendments in response to the Office Action mailed October 11, 2007 were discussed. The Examiner asked the representative for applicants to provide a proposed amendment in light of the discussion.

The disclosure is objected to because of the informalities in paragraph 0034.

Applicants have amended paragraph [0034].

Therefore, applicants respectfully submit that the Examiner's objection to the specification has been overcome.

Claims 1-2 and 5-14 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2002/0141378 to Bays et al. ("Bays").

Applicants reserve the right to swear behind Bays.

Amended claim 1 reads as follows:

A method, comprising:

operating a control node of a communication network at a packet bandwidth <u>wherein the control node coupled to a network node is located in a communication link between at least one server and at least one client;</u>
<u>determining at least one resonance state of a performance metric that exhibits improved network performance metrics at the control node by monitoring the performance metric and scanning across a range of bandwidths of the control node until the at least one resonance state in the performance metrics is observed indicating that one or more of the network performance metrics is optimized, and</u>
<u>setting said packet bandwidth of the control node based on the at least one resonance state of the performance metrics that is optimized.</u>
(emphasis added)

Bay discloses facilitating deployment, support, and configuration of network routing policies. More specifically, Bay discloses a routing control device acting as a server that provides the clients with a set of policies as established on the server device (paragraph [0042], Figure 1). In particular, Bay discloses:

In all three options, <u>best path is determined by attempting to characterize the performance of the path through each destination peer</u>. This performance is gauged on a weighted aggregate of the results of a series of tests, which may include any of the following factors 1) response time, 2) hop count, 3) available bandwidth 4) jitter, 5) throughput, and 6) reliability. In addition, the path performance metric generated by the central server 40 and data collectors 90 can be used as merely another test that is weighted and aggregated with other tests in selecting the best path to a given destination. Since the function of the tests is simply to determine best path, new methods may be added in the future by simply defining the test method and adding the weight of the results to the scale. <u>After the best path has been determined, routing control device 20 injects a route for the destination network into the routing system 30</u> with the next hop set to the address of the selected destination peer using techniques as described in section 1.2.2 (see steps 920 and 922).

(Bay, paragraph [0056]) (emphasis added).

Thus, Bay merely discloses determining <u>a best path</u>, and injecting <u>a route</u> based on the best path. In contrast, amended claim 1 refers to <u>determining at least one resonance state of a performance metric that exhibits improved network performance metrics at a control node that is coupled to a network node by monitoring the performance metric and scanning across a range of bandwidths of the control node until the at least one resonance state in the performance metrics is observed indicating that one or more of the network performance metrics is optimized.</u>

Additionally, Bays fails to discloses <u>setting the packet bandwidth of the control node</u> <u>based on the at least one resonance state of the performance metrics that is optimized,</u> as recited in amended claim 1.

Because Bays fails to disclose all limitations of amended claim 1, applicants respectfully submit that amended claim 1 is not anticipated under 35 U.S.C. § 102(e) by Bays.

Given that claims 6 and 9 contain limitations that are similar to those limitations discussed with respect to amended claim 1, applicants respectfully submit that claims 6 and 9 are not anticipated under 35 U.S.C. § 102(e) by Bays.

Given that claims 2, 5, 7-8. 10, and 12-14 depend from amended claims 1, 6, and 9 respectively, and add additional limitations, applicants respectfully submit that claims 2, 5, 7-8. 10, and 12-14 are not anticipated under 35 U.S.C. § 102(e) by Bays.

It is respectfully submitted that in view of the amendments and arguments set forth herein, the applicable rejections and objections have been overcome.

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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